

E9nndoss

Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

14 CR 34 (RMB)

5 DINESH D'SOUZA,

6 Defendant.

7 -----x

8 New York, N.Y.
9 September 23, 2014
11:00 a.m.

10
11 Before:

12 HON. RICHARD M. BERMAN,

13 District Judge
14

15 APPEARANCES

16 PREET BHARARA
17 United States Attorney for the
18 Southern District of New York
CARRIE COHEN
Assistant United States Attorney

19 BENJAMIN BRAFMAN
20 ALEX SPIRO
21 MARK BAKER
Attorneys for Defendant
22
23
24
25

E9nndoss

Sentence

(In open court)

THE COURT: First off today we have some housekeeping matters. And they are these. Counsel if you would just give me a minute. Thanks.

We have some recent additions to the docket.

There were three letters posted, one from a man named Dan Robinson; one from a man named James Baker, and today I saw a letter from Dixie D'Souza, Mr. D'Souza's ex-wife. We posted that letter as well. I will make reference to it during the course of my remarks.

I will also make reference to post-plea, presentence interviews of Mr. D'Souza in the media. In fact, two were submitted by the government in connection with the sentencing. My thought is this: They are, to be sure, unusual in my experience. Many defendants prefer to lay low so to speak before sentencing, but they have an absolute right to participate in interviews as Mr. D'Souza has done as a matter of free speech.

So how this sentencing will proceed today is as follows:

We have a very full record in this case which I have been over I think quite carefully with a fine-toothed comb, so I am going to for the first part of the sentence explain what I see in the record and what the implications of that are, and also I will review and have reviewed before coming on the bench

E9nndoss

Sentence

1 what are called 18 United States Code Section 3553(a) factors,
2 which we as sentencing judges are directed to look at now that
3 and for some time the United States sentencing guidelines are
4 no longer mandatory.

5 I didn't mean to cut you off, Mr. Brafman.

6 Did you want to say something preliminarily?

7 MR. BRAFMAN: No, your Honor.

8 THE COURT: Mr. D'Souza is being sentenced today
9 because he pled guilty before trial to a felony pursuant to a
10 written plea agreement which is dated May 19, 2014, and which
11 is available on the public docket, the plea agreement.

12 He has also in that plea agreement waived his rights
13 to appeal both his conviction and his sentence if he receives a
14 sentence that is within or less than what is called the
15 agreed-to sentencing range, that is to say, agreed to by the
16 defense and the government, and that range is 10 to 16 months
17 of incarceration.

18 So any sentence that's within that range or lower he
19 has essentially waived his rights to appeal directly and
20 indirectly.

21 Before Mr. D'Souza pled guilty on May 15, 2014, I
22 denied a defense motion which had been filed on April 17, 2014.
23 There was a reply submitted on May 2, 2014. That was what we
24 call a motion to dismiss the case.

25 Despite the media discussion and those presentence

E9nndoss

Sentence

1 interviews with Mr. D'Souza regarding the topic of selective
2 prosecution, I wish to point out at the outset that defendant's
3 motion to dismiss was not in any way based upon selective
4 prosecution. It was not based upon Mr. D'Souza's
5 often-repeated contention that he was being singled out for
6 this election law violation because of his prior critiques in
7 film, in writing, in speeches and as a TV commentator of
8 President Obama and the Obama Administration. Rather, the
9 defense motion to dismiss raised technical constitutional
10 challenges to the two counts with which Mr. D'Souza was
11 charged. And on May 15, 2014, the Court determined that the
12 motion to dismiss was without merit.

13 I said, among other things, at that time, "Where, as
14 in our case, the defendant is alleged to have engaged in
15 so-called conduit contributions or straw donor contributions,
16 the statute is constitutional." The full text of my decision,
17 which is considerably longer than that, appears also on the
18 public docket.

19 In a separate motion, also filed by the defendant, the
20 defense sought to discover documents and other information from
21 the government based upon its suspicion and/or its claim that
22 D'Souza was being selectively prosecuted. He presented no
23 evidence of selective prosecution and was asking the Court to
24 allow him to look for such evidence. And this motion, too, was
25 denied.

E9nndoss

Sentence

1 I said at the time, among other things, "The Court
2 concludes that the defense respectfully has presented no
3 evidence that he," Mr. D'Souza, "was selectively prosecuted.
4 The burden is on Mr. D'Souza and the burden is the presentation
5 of some evidence. There is no evidence of discriminatory
6 effect, nor of discriminatory purpose." That is also found in
7 the transcript of proceedings.

8 So what I'm trying to say is that the claim of
9 selective prosecution, legally speaking, is all hat, no cattle.

10 Mr. D'Souza's underlying crime was that he wilfully
11 and knowingly violated the campaign finance laws by
12 contributing \$20,000 more than the \$10,000 legal limit which
13 Mr. D'Souza and his former wife, Dixie D'Souza, had already
14 contributed. The \$20,000 was contributed to the United States
15 Senate campaign of his friend and Dartmouth classmate, Wendy
16 Long.

17 Willfully is defined as follows: An act is done
18 willfully is it is done with an intention to do something the
19 law forbids or with a bad purpose to disobey the law or with a
20 specific intent to fail to do something the law requires to be
21 done. The defendant need not have known that he was breaking
22 any particular law or any particular rule. He need only have
23 been aware of the general unlawful nature of his actions.

24 There is no doubt that Mr. D'Souza's crime was
25 willful. This crime occurred in August 2012. The illegal

E9nndoss

Sentence

1 contributions were made through four so-called straw donors who
2 were personal friends of Mr. D'Souza and/or, in the case of
3 Tyler Vawser, a work subordinate. Tyler Vawser worked for Mr.
4 D'Souza at Kings College as Mr. D'Souza's executive personal
5 assistant.

6 The straw donors were Mr. and Mrs. Tyler Vawser, who
7 gave \$10,000 to the Long campaign, and Denise Joseph and her
8 husband, Dr. Louis Joseph, who also gave \$10,000 to the Long
9 campaign.

10 The \$20,000, that is to say the two \$10,000 dollar
11 contributions, were made at Mr. D'Souza's request and on the
12 understanding that Mr. D'Souza would reimburse the Vawser and
13 the Josephs. And hence the contributions were really
14 contributions of Mr. D'Souza, and hence the term straw donors.
15 The reimbursements by Mr. D'Souza were made in cash very soon
16 after the contributions were made by the Vawser and the
17 Josephs.

18 Mr. D'Souza's actions in orchestrating these campaign
19 contributions were unquestionably willful, as reflected in his
20 plea in this case. That plea transcript is also in the public
21 docket of this matter.

22 The presentence investigation report prepared by the
23 probation department has this to say about what I have just
24 been talking about: "Neither the Josephs nor the Vawser would
25 have made the \$10,000 campaign contributions to the Long

E9nndoss

Sentence

1 campaign but for D'Souza's assurance that D'Souza would
2 reimburse them for these contributions. D'Souza knew and
3 understood the monetary limit on an individual contribution to
4 a federal candidate. Vawser asked D'Souza if what he was
5 asking Vawser to do was permissible, to which D'Souza responded
6 that if anyone asked Vawser about the donation, Vawser should
7 tell them that Vawser knows Wendy Long and supports her
8 candidacy." D'Souza also had conversations with Wendy Long
9 about the contributions which I will discuss as we go forward.

10 I urge you not to believe anything to the contrary of
11 what I just said.

12 In sentencing a defendant, after the Supreme Court
13 decisions in the *Gall* case in 2007, the *Kimbrough* case in 2007,
14 in the *Booker* case in 2005, and also in Second Circuit Court of
15 Appeals decision in *Crosby* and *Regalado*, in 2005 and 2008,
16 respectively, we know that the United States Sentencing
17 Guidelines are no longer mandatory.

18 The elimination of mandatory sentencing guidelines
19 sentences is generally regarded as a positive development.
20 Guidelines sentences were, in my view, too rigid and formulaic,
21 and they undervalued the judgment of the courts in fashioning
22 reasonable sentences. So, in sentencing these days, today, the
23 Court must, and I have at least preliminarily before coming on
24 the bench today, considered all of the factors and objectives
25 listed at 18 United States Code, Section 3553(a), which include

E9nndoss

Sentence

1 these: The nature and the circumstances of the offense for the
2 crime, the history and characteristics of the defendant.

3 We try to accomplish these objectives: One is to
4 reflect the seriousness of the offense, another is to promote
5 respect for the law, another is to provide a just punishment
6 for the offense, yet another is to afford adequate deterrence
7 to criminal conduct. These objectives are all quite important
8 in this case, as you will see going forward.

9 Another is to protect the public from further crimes.
10 Yet another is to provide the defendant with needed educational
11 or vocational training or medical care or other correctional
12 treatment in the most effective manner.

13 In doing all that, in reviewing what a fair and
14 reasonable sentence is, we look at the kinds of sentences
15 available. We look at the kinds of sentence and the sentencing
16 range established in the United States Sentencing Guidelines,
17 even though, as I've said, they are no longer mandatory.

18 We look at any policy statements issued by the United
19 States Sentencing Commission to the extent they are applicable.

20 We seek to avoid unwarranted sentence disparities
21 among similarly situated defendants, and in appropriate cases
22 to provide for restitution.

23 These factors, these 18 U.S.C. 3553(a) factors are
24 nearly all important in this case, with the exception of No. 7
25 which is restitution. That does not appear to be an issue in

E9nndoss

Sentence

1 this case.

2 In evaluating those 18 U.S.C. 3553(a) factors, I have
3 concluded, among other things, that Mr. D'Souza's crime is
4 serious. This campaign law offense and much of the inaccurate
5 chatter and interviews surrounding this case do not promote
6 respect for the law and need to be remedied.

7 The public certainly needs to be deterred -- this is
8 the concept of general deterrence -- from making phony
9 contributions and violating the election laws. And in my
10 judgment, as you will see, Mr. D'Souza can benefit from certain
11 services that I think ought to be put into place.

12 So, even though the guidelines are no longer
13 mandatory, we start our sentences with a guidelines analysis as
14 a point of reference. Here the Court has determined that the
15 applicable guideline range in this case is ten to sixteen
16 months of incarceration based on what we call an offense level
17 of 12 and a criminal history category of I.

18 In his plea agreement, Mr. D'Souza agrees with this
19 analysis, and he also acknowledges and agrees that he is being
20 given no credit for what we call acceptance of responsibility.
21 This concept of acceptance of responsibility has also been the
22 subject of some, in my opinion, misunderstanding in the media,
23 particularly as also reflected in some of the interviews.

24 Mr. D'Souza it should be noted agreed in the plea
25 agreement that he would not seek a two-level reduction in the

E9nndoss

Sentence

1 stipulated offense level for acceptance of responsibility.

2 In considering these factors at 18 United States Code
3 Section 3553(a), I have also made these findings:

4 Mr. D'Souza pled guilty before me on or about May 20,
5 2014, to violating federal campaign finance laws, 2 United
6 States Code, Sections 441f and 437g(d)(1)(D) by contributing
7 \$20,000 to the Senate campaign of Wendy Long in the name of
8 others; that is, as we've said, Mrs. Denise Odie Joseph and
9 Dr. Louis Joseph and Mr. and Mrs. Tyler Vawser.

10 This is the defendant's first offense in an otherwise
11 apparently law-abiding life, and this is an important
12 consideration.

13 Mr. D'Souza is 53 years of age.

14 He's single, having divorced.

15 He has one child who is 19 and is also a student at
16 Dartmouth college and who has written in fact a letter of
17 support on his behalf.

18 Mr. D'Souza is a naturalized U.S. citizen and a
19 permanent U.S. resident. He was born in Mumbai and came to the
20 United States for high school. He obtained his high school
21 diploma from Patagonia Union High School in Patagonia, Arizona,
22 and thereafter has remained in the United States.

23 Mr. D'Souza has a bachelor's degree in English from
24 Dartmouth College, class of 1983. I am not aware that he has
25 any advanced academic degrees such as a master's or a Ph.D.,

E9nndoss

Sentence

1 but counsel can address that if that's incorrect.

2 Mr. D'Souza has been very successful in a career of
3 writing commentary, filmmaking, and he reports to the probation
4 department a net worth of in excess of \$5 million. Since
5 approximately 2010, he has earned his living as a well-known
6 best-selling author and film producer and TV commentator.

7 From 2010 to 2012, he was the president of King's
8 College, a Christian college in New York City, about which the
9 presentence investigation reports states the following:

10 "D'Souza stated that he resigned from this employment due to
11 having been dating a woman while he was going through his
12 divorce, which D'Souza believed conflicted with the school's
13 values, which we are told are conservative Christian."

14 This is in the presentence report, which goes on to
15 say, Per King's College, D'Souza was president from August 2010
16 to October 2012, earning \$600,000 per year and that he
17 resigned. No further data was provided.

18 And Mr. Vawser writes in his letter to Court, While
19 the circumstances around his departure from King's College were
20 not ideal, the staff that worked closest with Dinesh still
21 respect him greatly to this day."

22 From 2008 to 2010, Mr. D'Souza derived his income
23 principally from writing and through speaking fees. According
24 to the presentence report, he earned \$200,000 per year in books
25 and another \$200,000 to \$250,000 per year in speaking.

E9nndoss

Sentence

1 From 2001 to 2007, he was a research scholar at Hoover
2 Institute.

3 From 1989 to 2001 he was a research scholar at
4 American Enterprise Institute.

5 Between 1987 and 1988, during the Reagan
6 Administration, Mr. D'Souza was a domestic policy analyst at
7 the White House.

8 From 1985 to 1987 he was the managing editor of Policy
9 Review, a Washington, D.C. publication.

10 From 1983 to 1995 he was employed as editor in chief
11 at The Prospect, of Princeton, New Jersey.

12 I am going to talk about the submissions of the
13 parties for a few moments. Of course, Mr. Brafman, Mr.
14 D'Souza, and of course the government as well, will be invited
15 to speak when I finish this background.

16 By submission dated September 3, 2014, the defense, as
17 noted, agrees with the probation office calculation of Mr.
18 D'Souza's sentencing guideline range of 10 to 16 months of
19 incarceration, "Although for guideline purposes" -- this is the
20 defense speaking -- "the plea agreement precludes defendant
21 from advocating a downward adjustment based upon his acceptance
22 of responsibility. Nevertheless, for purposes of considering a
23 variance sentence outside the guidelines, the fact that
24 defendant spared the government a trial by pleading guilty,
25 even at a later time than might have otherwise been the case,

E9nndoss

Sentence

1 may well be considered by the Court."

2 That is a correct statement under 3553(a), the Court
3 may consider all of these factors.

4 The defense goes on to say that "Defendant's guilty
5 plea is buttressed by his heartfelt statement of contrition, as
6 recognized in the letters included herein by those who know him
7 best."

8 There were some 27 or so letters, excluding the three
9 that I mentioned at the beginning of this proceeding, that were
10 submitted on behalf of Mr. D'Souza.

11 "So, too" -- back to the defense submission -- even if
12 not for purposes of a downward departure, in order to initially
13 arrive at the total offense level, the Court may well
14 consider -- certainly for purposes of the Section 3553(a)
15 factors -- the reality that Dinesh D'Souza's aberrant
16 criminality in this case was so completely alien to his normal
17 character."

18 This is an issue that I will discuss a little bit
19 further below.

20 Back to the defense contention: "Mr. D'Souza, who
21 pled guilty and accepted responsibility for his actions, is
22 sincerely remorseful for his conduct. Throughout the case
23 neither D'Souza nor his attorneys have ever disputed D'Souza's
24 factual guilt, merely challenging the charges based on complex
25 legal principles later rejected by the Court."

E9nndoss

Sentence

1 That is a quote from the defense submission which
2 tracks what I said at the outset about the motions.

3 "These complex legal principles did not include
4 selective prosecution as I said before. To be sure, what Mr.
5 D'Souza did was wrong, and his conduct violated the law. He
6 has acknowledged criminal conduct and has accepted full
7 responsibility for his crime."

8 Defense counsel go on to say the following, "It is
9 accordingly requested that as a condition of the term of
10 probation, the Court direct that Dinesh D'Souza engage in a
11 sufficient amount of community service by which he can help
12 educate others, perhaps less fortunate, and thereby enable them
13 to benefit from those lessons learned as a result of his own
14 mistakes in general and this criminal prosecution in
15 particular."

16 The defense describes the defendant as "a self-made
17 man who rose from humble roots to achieve a significant degree
18 of professional and personal accomplishment. Along the way his
19 demeanor was selfless, community oriented and devoted more to
20 the betterment of others than for any purposes of
21 self-aggrandizement."

22 I'm still quoting from the defense submission.
23 Counsel argues further that "Mr. D'Souza has had a
24 distinguished and heretofore unblemished career as a scholar,
25 and Mr. D'Souza has continually placed a priority on caring for

E9nndoss

Sentence

1 friends, family and neighbors."

2 Defense counsel also adds, and this is something I am
3 a little bit unclear of and perhaps a little bit later on,
4 Mr. Brafman, you could explain, you say in the letter that,
5 "Mr. D'Souza also potentially faces an array of parallel
6 proceedings which carry substantial financial, administrative,
7 and civil penalties," and I might just ask you later to
8 elaborate on what that means.

9 Turning to the government position, the government
10 takes a markedly different view of sentencing than the defense,
11 as is not uncommon.

12 By submission dated September 10, 2014, the government
13 states that "The defendant both instructed Vawser to lie about
14 his contribution and lied to Wendy Long about the Vawser's and
15 the Josephs' contributions. Specifically, when the defendant
16 asked Vawser to make the donation to the Long campaign with the
17 promise that the defendant would reimburse Vawser for the
18 donation, Vawser asked defendant if what the defendant was
19 asking Vawser to do was permissible."

20 This is the government speaking.

21 "So the defendant responded in sum and substance that
22 if anyone asked Vawser about his contribution, Vawser should
23 tell them that Vawser knows Wendy Long and supports her
24 candidacy. When Ms. Long questioned the defendant about the
25 Josephs' contribution to her campaign as well as the Vawser's

E9nndoss

Sentence

1 contribution, the defendant responded, in sum and substance,
2 not to worry, and that they both had sufficient funds with
3 which to make the contributions."

4 This is all from the government's letter.

5 The government seeks a sentence of incarceration
6 within the guideline range of 10 to 16 months. The government
7 states, "A sentence within the range of 10 to 16 months'
8 imprisonment is sufficient but not greater than necessary to
9 serve the legitimate purposes of sentencing, especially in
10 light of the seriousness of the offense, the defendant's post
11 plea failure to accept responsibility for his criminal conduct,
12 the need for general deterrence, and the need to avoid
13 unwarranted sentence disparities."

14 And the government there cites a series of cases.

15 The government also states, Defendant's "educational
16 and work history actually aggravate his illegal conduct, as he
17 is a sophisticated individual who rather than follow the law
18 chose, in his words, to take a shortcut and break the law."

19 The government argues that defendant pled guilty at
20 the last possible moment before trial began not because he
21 actually accepted responsibility for his conduct, but because
22 he was in fact guilty, and he had no defense or excuse for his
23 criminal conduct.

24 The government encloses, as I think I mentioned
25 before, two videos and transcripts of defendant's post-plea

E9nndoss

Sentence

1 appearances on TV. They are government's Exhibits C and F, in
2 which the defendant acknowledges that he pled guilty because --
3 this is a quote from the government, "going into a trial with
4 in a sense, no defense.

5 One of these videos, the F video, I am going to play
6 part of at this point.

7 (Video played)

8 THE COURT: I mentioned before and I will say it
9 again, Mr. D'Souza had every right to appear in that interview
10 and others.

11 Now let's talk about the letters of support submitted
12 on his behalf for just a few minutes. Defense counsel relies
13 heavily on these letters. I think, as I said before, there are
14 27. They are, with the exception of the latest letter from
15 Dixie D'Souza -- that is not one of the 27, that came in this
16 morning, at least as far as I am aware. The other letters are
17 supportive and they come from, among others, Mr. D'Souza
18 himself, his daughter, Tyler Vawser, Wendy Long, Laura
19 Ingraham, Reverend Michael Jones, and others, all of whom
20 describe Mr. D'Souza's positive qualities. Several also
21 describe his crime as a mistake, as defense counsel has also
22 said in its submission.

23 Wendy Long, for example, says, "He has admitted his
24 mistake."

25 Danielle D'Souza says, "I understand his giving nature

E9nndoss

Sentence

1 and can see how my father made the mistake of giving too much
2 to her campaign."

3 Margaret D'Souza says, "My son has made an error and
4 is extremely sorry for it."

5 Sandira D'Souza says, "I'm quite sure that his
6 intentions were never to break the law of the land that he so
7 very loves."

8 Bruce Schooley says, "Since I know Dinesh so well, I
9 can tell you why he did what he did regarding this case. His
10 generosity got the better of him, and he did something very
11 foolish. I know for certain that he had no intention of
12 committing a felony. He was merely trying to help a very good
13 friend, and he did it in a shortsighted and wrong way."

14 These letters submitted by the defense describe Mr.
15 D'Souza as generous and intelligent and request leniency on his
16 behalf.

17 Wendy Long, for example, says, "I'm certain that his
18 problem arose in part from his virtue of being an extremely
19 generous person -- in this case, to a fault -- with others."

20 Jim Hanon says, "What I experienced from Dinesh was
21 grace, and what I saw in him was a heart without malice."

22 Laura Ingraham says, "Dinesh is simply one of the
23 finest human beings I have ever met. His generosity of spirit,
24 philanthropy, keen sense of compassion and devotion to country
25 are what I hope my own children exhibit when they mature into

E9nndoss

Sentence

1 adults."

2 Reverend Jones says, "Dinesh D'Souza is one of the
3 sharpest, smartest, and most experienced individuals in the
4 world of politics, education, and media and should have known
5 better."

6 And Gerald Molen, whose name you heard mentioned in
7 the interview, says, "What I saw was a learned and highly
8 intelligent individual with a passion for our country, its
9 people, and its growth as a nation."

10 And Sonya Pourmand said, "I have always thought of
11 Dinesh as an understanding, compassionate, kind, intelligent,
12 graceful, and humble man."

13 Letters of support I should tell you have become an
14 integral part of sentencing, not just this one, especially
15 since the sentencing guidelines became no longer mandatory.
16 Such letters are always welcome, and they are informative, even
17 if they are almost always supportive, if not glowing, in
18 support of the particular defendant. The Court receives
19 packages of letters of support not unlike those submitted in
20 this case in virtually every criminal case, including one I
21 received just the other day where a defendant had pled guilty
22 to a conspiracy to commit a Hobbs act robbery of drugs
23 involving fake police uniforms, badges, police car sirens, and
24 the possession of two guns to be used in connection with the
25 robbery conspiracy. The robbery never occurred. And someone

E9nndoss

Sentence

1 wrote in his behalf to me, "I have known the defendant" -- who,
2 by the way, had five prior convictions -- "for almost 20 years
3 now. To be honest, throughout all the many years of knowing
4 him, he's always been a loving, kind, well-mannered, dedicated,
5 hard-working, respectful young man."

6 So letters, including those that we have here, can be
7 revealing sometimes for what they don't say as much as for what
8 they do say. With respect to the letters in this case, first,
9 they don't in my view adequately explain why Mr. D'Souza, a
10 successful, famous political commentator, author, lecturer and
11 filmmaker at the pinnacle of his success, would commit an
12 election law felony. Such self-destructive behavior cannot
13 neatly in my view be explained either as friendship or as a
14 mistake or as out of character. And we would in my view need a
15 thoughtful psychological intervention or analysis to have
16 better insight.

17 Second, Ms. Long's letter never explains what she
18 really thought about the two straw \$10,000 contributions from
19 Vawser or Joseph. We understand she admires Mr. D'Souza, but
20 we know she had expressed concerns about the contributions.

21 The presentence report says this: "On more than one
22 occasion, Wendy Long questioned D'Souza about the Josephs'
23 contribution to her campaign as well, as the Vawser's
24 contribution, in part because the Vawser and the Josephs were
25 not typical of other donors and were connected to D'Souza.

E9nndoss

Sentence

1 D'Souza responded not to worry, and that they both had
2 sufficient funds with which to make the donations." This is
3 the presentence report continuing. "Eventually, in or about
4 the first half of 2013, after Ms. Long continued to press the
5 defendant about the Josephs' and the Vawser's campaign
6 contributions, D'Souza acknowledged to Ms. Long that he had
7 paid for their contributions, but that Ms. Long should not
8 worry because she had not known about it."

9 Third with respect to the letters, Mr. Vawser's letter
10 is silent as to any potential legal or moral culpability he
11 might have by violating the election law. How is that
12 friendship to write a \$10,000 check and implicate one's spouse
13 and one's self in a possible election crime?

14 And, fourth, almost every defendant expresses remorse
15 for his mistake. They often mean it was a mistake in
16 hindsight, and they are certainly sorry that they got caught.
17 But Mr. D'Souza's crime was clearly no mistake. A mistake here
18 might have been his writing a check for \$30,000 to Ms. Long.
19 That would have been a mistake about election law contribution
20 limits. But that's not what happened. Instead he asked two
21 friends to write a \$10,000 check from essentially you, being
22 one of the friends, and your spouse -- he said that in effect
23 to both contributors -- to Wendy Long. In effect he said,
24 Trust me and do this.

25 He said, I'll pay you back right way so you won't

E9nndoss

Sentence

1 really be out of pocket in cash, and if anyone asks you about
2 this, just say you know Wendy Long and support her candidacy.
3 That is neither friendship nor mistake. That's taking a
4 staggering, enormous risk.

5 The letter that came in today from Dixie D'Souza is
6 quite at odds with the letters submitted by the 27 individuals
7 in support of Mr. D'Souza. I posted that letter, as all the
8 others, on the docket.

9 It says, though, among other things, "I know Dinesh
10 better than anyone and can attest to his flawed character and
11 lack of truthfulness. Please accept this letter as my effort
12 to correct the record Dinesh created by his false and
13 misleading submissions to the Court regarding me, the extent
14 and nature of his criminal conduct, etc."

15 Dixie D'Souza also says respectfully, with respect to
16 defense counsel, nothing that they said on her behalf was
17 remotely correct.

18 "Now I must take this opportunity to speak -- this is
19 Dixie D'Souza speaking -- "for myself and truly let the record
20 be complete.

21 "First, Dinesh's counsel wrote in describing the
22 crimes to which Dinesh pled guilty that Dinesh acted bereft of
23 any corrupt purpose or design other than blind and misguided
24 loyalty.

25 "That simply is not true."

E9nndoss

Sentence

1 This is her letter.

2 "Dinesh served on the Wendy Long finance committee and
3 obviously knew the contribution guidelines and political
4 finance campaign laws."

5 She goes on to say that "Dinesh also contributed
6 \$5,000 to a candidate for the United States Senate in my name,"
7 meaning in her name, without her knowledge. She says, "without
8 my knowledge or permission and forged my signature on the
9 campaign contribution form in an effort to disguise the
10 fraudulent campaign donations."

11 Dixie D'Souza also says, "I urge the Court to act
12 accordingly to afford adequate deterrence to similarly situated
13 defendants, namely, spouses who are tempted to contribute on
14 behalf of their spouses without their knowledge or consent."

15 She also says that Mr. D'Souza's motives were
16 self-serving, "As Dinesh indicated to me," meaning to her,
17 "that his support for Ms. Long's campaign was due in part to
18 her support of his Obama 2016 movie."

19 She said, "He told me that he felt compelled to pay
20 her back because she introduced him to a big donor who helped
21 fund the Obama 2016 movie."

22 She also says something that's -- well, she says the
23 following. She says, "Contrary to the statements made in Mr.
24 D'Souza's sentencing memorandum, it is my former husband,"
25 meaning the defendant, "who has an abusive nature. In one

E9nndoss

Sentence

1 instance it was my husband who physically abused me in April
2 2012 when he, using his purple belt karate skills, kicked me in
3 the head and shoulder, knocking me to the ground and creating
4 injuries that pain me to this day."

5 Well, the letter speaks for itself. It goes on for
6 some four, five pages. As I said before, it's on the public
7 docket and can be read.

8 I'm almost done with my presentation.

9 I just want to talk for a moment about the rule of
10 law. So one judge said that, "If we cannot have faith and
11 confidence in our election process, then we can't exist as a
12 democracy." That is Judge Collier, a district judge in Florida
13 in the case of *United States v. Odom*. I totally agree with
14 that quote. I understand that the parties in this case dispute
15 the applicability of that case to our sentencing, but it seems
16 to me the quote of the judge is unassailable. If we cannot
17 have faith and confidence in our election process, then we
18 can't exist as a democracy.

19 So the D'Souza case here is at its core about the rule
20 of law. The law said that Mr. D'Souza could not contribute
21 more than \$10,000, Mr. and Mrs. D'Souza, to the Long campaign.
22 The defendant by virtue of his education and political
23 expertise knew that and yet knowingly made the unlawful straw
24 contributions. No plea, including the plea in this case, is
25 accepted by the Court unless the defendant acknowledges that he

E9nndoss

Sentence

1 had the requisite intent to commit the crime. Mr. D'Souza had
2 the requisite intent, and he acknowledged that and said so both
3 in his plea agreement and at his plea allocution.

4 To be sure, Mr. D'Souza never said that he didn't do
5 the crime. His principal public contention was after the crime
6 had happened and after the plea was entered that he is a victim
7 and is being singled out. But, as I said before, the claim of
8 selective prosecution was never a basis for the defense motion
9 to dismiss, and it was unsupported by any evidence.

10 The defense says it has accepted the Court's rulings
11 in this case, yet Mr. D'Souza, having every right to be
12 interviewed -- I said that now three times -- continues to
13 deflect and minimize the significance of the crime and of his
14 behavior by reference to other people, other issues, and other
15 events, including by reference to President Obama, by reference
16 to Senator Harry Reid, and I believe his granddaughter's
17 wedding, by reference to the IRS, by reference to the Tea
18 Party, by reference to having no intent, by reference to having
19 no corrupt motivation, and by reference to misguided friendship
20 for Wendy Long.

21 I'm not sure, Mr. D'Souza, that you get it. And it's
22 still hard for me to discern any personal acceptance of
23 responsibility in this case. Notwithstanding Mr. D'Souza's
24 contention in his post-plea TV interview that you saw, I'm
25 totally confident that Lady Justice is doing her job and that

E9nndoss

Sentence

1 she's not taking off her blindfold to target Dinesh D'Souza.

2 So one last point. I want to answer this question why
3 the rule of law is so important. It's important for three
4 reasons, and perhaps more:

5 One, it's important because free and fair elections,
6 including only lawful campaign contributions, are at the heart
7 of our political system.

8 Two, it's important because in violating the election
9 law, Mr. D'Souza compromised anywhere from two to five of his
10 friends and associates, Mr. and Mrs. Vawser and Mrs. Joseph and
11 her husband, Wendy Long, and Dixie D'Souza, perhaps six people.
12 It doesn't matter if these people still like him and write
13 letters of support on his behalf.

14 And, third, the rule of law is important, because if
15 we don't follow the law and the court decisions, we are
16 diminished as a society, and not just the laws and decisions
17 that we like or all agree upon, but especially those laws and
18 those court decisions that we don't like and disagree over.

19 So the, Steve Malzberg I think is his name, interview
20 that I have just played respectfully misleads the listener.
21 You will recall Mr. D'Souza says in that interview that: "The
22 case revolved really on two points. One is the issue of
23 selective prosecution. In other words, is it the case that I
24 was being selectively prosecuted or excessively prosecuted for
25 something that normally doesn't get this kind of treatment?"

E9nndoss

Sentence

1 Incidentally, just as an aside, the defense and the
2 government have each submitted approximately eight to ten
3 cases, different cases about prosecutions for election law
4 violations. They argue about which cases are applicable here,
5 but there's 20 cases right there that belie this notion that
6 it's only Mr. D'Souza that's being charged.

7 Then in that interview he says, "The second issue was
8 my intent. Did I intend to commit a crime? Did I intend to
9 break the law?"

10 He goes on to say, "What really changed in the case,
11 is that the judge," that would be me, "ruled that the selective
12 prosecution issue could not be, could not be introduced in
13 court. And, second he" -- I guess meaning me -- "defined
14 intent in quite a narrow way that made it almost impossible for
15 me to launch a defense based on that. So those were the things
16 that changed."

17 That's Mr. D'Souza in the interview. That is
18 nonsense. Spin is what that is.

19 In fact, nothing changed except Mr. D'Souza pled
20 guilty. Selective prosecution was always sheer speculation on
21 Mr. D'Souza's part. He presented no evidence of it. And the
22 definition of willfully and knowingly, the intent issue has
23 been constant for me and for many of my colleagues for decades.

24 So I have also reviewed the presentence investigation
25 report, approved September 16, 2014, together with a sentencing

E9nndoss

Sentence

1 recommendation of the same date and an addendum of the same
2 date, the correspondence from the defense dated September 3 and
3 September 15 and the correspondence from the government dated
4 September 10. Mr. Brafman I would ask you if I have missed
5 anything, or anything from the government that I missed?

6 MS. COHEN: No, your Honor.

7 MR. BRAFMAN: No, sir.

8 THE COURT: So, Mr. Brafman, have you and Mr. D'Souza
9 had the opportunity to read and discuss that presentence
10 investigation report and these other pretrial submissions?

11 MR. BRAFMAN: Yes, sir.

12 THE COURT: Mr. D'Souza, you have been over those
13 materials with your attorney?

14 THE DEFENDANT: Yes, I have.

15 THE COURT: Do either of you have any remaining
16 objections to the contents of the presentence report?

17 MS. COHEN: No, your Honor.

18 MR. BRAFMAN: No, your Honor.

19 THE COURT: Mr. D'Souza?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: So I will return the report, which is our
22 practice, to the probation department.

23 At this time I am happy do to hear from defense
24 counsel, from Mr. D'Souza, and from the government, in that
25 order, if they wish to be heard.

E9nndoss

Sentence

1 MR. BRAFMAN: Your Honor, may I ask for just a
2 two-minute break.

3 THE COURT: Sure.

4 MR. BRAFMAN: Thank you.

5 THE COURT: You bet.

6 (Recess)

7 THE COURT: Mr. Brafman.

8 MR. BRAFMAN: Your Honor, may I proceed?

9 THE COURT: Yes, sir.

10 MR. BRAFMAN: Does the Court mind if I speak from
11 here. I think you will be able to hear me.

12 THE COURT: Wherever you are more comfortable.

13 MR. BRAFMAN: Thank you, Judge.

14 Judge, I want to start by saying that while I am not
15 pleased by a lot of what I heard your Honor say this morning, I
16 am grateful that you said it now so that I could have the
17 opportunity to respond.

18 I also have been doing this for a long enough time to
19 recognize that I am climbing a very steep hill, given the tenor
20 of the Court's remarks. But I intend to climb as hard as I
21 possibly can for a number of reasons: One, because I don't
22 believe Mr. D'Souza should go to prison for what he did; and,
23 two, because, and I say this with great respect, I think
24 although this is the first case I have had the privilege of
25 appearing before your Honor on I think you will conclude

E9nndoss

Sentence

1 hopefully from the manner in which I have conducted myself at
2 all proceedings that I have great respect for this Court and
3 for the integrity of this Court. And while I can disagree with
4 you and we can disagree, and sometimes that's my job, it
5 doesn't mean that I have any less respect for you just because
6 I think your Honor is wrong on some of these issues.

7 THE COURT: I have no doubt about that. And I have
8 the greatest respect for you personally and as an attorney as
9 well.

10 MR. BRAFMAN: Thank you, sir.

11 Thank you. Your Honor, I spoke with Ms. Cohen
12 yesterday briefly after we both got a copy of what we will call
13 the wife letter. And, true to form, never get sentenced if you
14 are also going through a bitter divorce, because there's always
15 a bitter, scorned spouse who may show up on the horizon.

16 Both of us agree in words or substance that we really
17 weren't going to focus on what the wife said. But your Honor
18 did, so I need to respond very briefly. As a practical
19 matter --

20 THE COURT: I just want to say one thing, and I won't
21 interrupt you. What I meant to do was to give a complete
22 description of the record that was presented before me. That
23 was my goal. Whether I succeeded ordinary not, I don't know.
24 But I wanted you to know the universe before you spoke actually
25 of what I knew.

E9nndoss

Sentence

1 MR. BRAFMAN: I appreciate that. But since the Court
2 has placed some very personal and derogatory information from
3 the wife into the record, I just need to briefly respond, and
4 then I am going to move on, because I don't believe, and I hope
5 I'm right that your Honor's sentence is going to be determined
6 based on what this woman said to you in a letter which we got
7 the day before sentence and don't have a chance to even respond
8 to.

9 But I will say parenthetically, if she were here and
10 we placed her under oath, I could demonstrate in 20 minutes
11 that 90 percent of what she said in the letter is patently
12 false.

13 What I tried to do in the short time that I have had
14 since I got the letter, the only thing I could do is get a
15 letter from the accountants who prepared all of the returns for
16 the husband and wife for the last ten years, and he tells me in
17 the letter -- that I'm happy to submit although I am assuming
18 it doesn't matter -- that she never took any interest in any of
19 the couple's finances and that she always authorized Mr.
20 D'Souza to do everything on behalf of the couple. I don't
21 think the government even disputes that.

22 But I also want to just read one quote from a letter
23 from the daughter of the couple concerning the issue of abuse,
24 because that is personal, and that hurts to have that in the
25 record, regardless of the sentence your Honor imposes.

E9nndoss

Sentence

1 At page 19 of our memo we cite from a letter to the
2 Court from Danielle. Danielle is a 19-year-old honor student
3 at Dartmouth. This is not a kid. This is not an abused child.
4 And she writes, in pertinent part, "My parents had a broken
5 marriage for a long time, and unfortunately my father did not
6 understand my mother's abusive nature before marrying her. For
7 this, I wept for him. Then he told me he would marry her 20
8 times over just to have me, because I am the joy of his life."

9 That letter does not sound to me like someone who is
10 lying to a court about her relationship with either her father
11 or her mother. So I ask your Honor when imposing sentence to
12 give the letter from Mrs. D'Souza as much credit as I think it
13 deserves, which is none.

14 So let me start and talk about the issues that I think
15 are important. I want to start with what your Honor said
16 before concluding your remarks, because I think one of the
17 things you said resonates well with me and I think suggests why
18 a sentence of prison is not appropriate.

19 Your Honor said, and I'm paraphrasing because I
20 couldn't write as fast as I would have liked to, but your Honor
21 said something to the effect, we need to follow the law and we
22 need to follow precedent.

23 There is not a single case anywhere in the United
24 States of America that either I or the government with all of
25 their resources have found where someone like Mr. D'Souza, who

E9nndoss

Sentence

1 is a first offender, who is not an attorney, who is not a
2 campaign official, who had no corrupt relationship with the
3 candidate, who has given \$20,000 through straw donors, has gone
4 to prison.

5 What we did, judge, we cite a dozen cases in our memo
6 of cases far worse than the defendant's, and all of the judges
7 in all of those cases throughout the country imposed a
8 nonprison sentence.

9 Then, when the government cited their cases in their
10 memo, in our reply memo what we did, and I did it for the
11 convenience of the Court, we made a chart. We made a chart
12 side by side as to what the government claimed those cases were
13 about and why you should look at them as precedent, and then we
14 wrote in the chart the facts about those cases that so greatly
15 distinguish them from this case that in a million years they
16 could not be cited as precedent.

17 In many of the cases cited by the government where
18 sentences of imprisonment were imposed the defendants went to
19 trial, they were concluded to have lied on the witness stand,
20 to have engaged in obstruction of justice.

21 In the *Odom* case which your Honor cites, the defendant
22 was involved in an attempt to fix a construction project in a
23 school. There was a corrupt intent.

24 There was a corrupt motive in the *Bigica* case, which
25 they cite. It was a 2.5 million tax fraud that was part of the

E9nndoss

Sentence

1 case.

2 In the *Feiss* case which they cite, they attempted to
3 appoint people to a committee that selects judges. And the
4 woman who was sentenced to several months in jail was the
5 person who was organizing all of the people in the law firm to
6 contribute money to that campaign so her boss, this corrupt
7 lawyer, could be able to pick judges. How is that a precedent?
8 How is that a parity argument for this case.

9 In the *O'Donnell* case O'Donnell was an attorney, and
10 it was his second offense. He got a two-month prison sentence.
11 He was an attorney, and it was his second offense. He got a
12 two-month prison sentence.

13 In the *Tigani* case, there was a scheme involved to
14 influence matters affecting a family liquor business, and it
15 was a tax case.

16 In the *Hogan* case, the corrupt purpose was attempting
17 to influence cigarette tax legislation. That is every one of
18 the cases cited by the government with the exception of the
19 *Whittemore* case. The *Whittemore* case involved a level 22. 41
20 to 51 months was the sentencing guidelines. The judge in that
21 case imposed a 24-month sentence. Whittemore was a lobbyist
22 and an attorney. He went to trial and testified. The
23 government told the Court that he lied, and that he should
24 enjoy an obstruction of justice enhancement. In that case the
25 court cut the sentence by 50 percent.

E9nndoss

Sentence

1 There isn't a single case, not a single case -- and
2 we've looked, Judge. Trust me. We looked. If we could have
3 found one, the government could have found one. Not one case.

4 You know what they do in their response to the dozen
5 cases that we cite which are on point, where people did what
6 Mr. D'Souza did and have less of an impressive background where
7 they got probation, they completely ignore them.

8 You look at the government's memorandum from page 1 to
9 the end and it doesn't touch a single case, because it can not.
10 And here's the argument, Judge. I can say it, so if there are
11 people quoting us both, we can say I am assuming and concluding
12 for the purposes of this discussion that there was not a
13 selective prosecution.

14 Let's assume for the purposes of this discussion that,
15 as the government maintained, that this was a routine audit
16 that disclosed these contributions, because when you look at
17 the Wendy Long campaign filings, and I don't mean this in a
18 pejorative way, but Ray Charles could see these donations.
19 It's 250, 250, 60, 300, 10,000, 10,000, 10,000.

20 So I will accept for the purposes of this discussion
21 or the purposes of intellectual honesty that it came up at a
22 routine audit. But from that moment on, when they realized who
23 they had in their sights, there is nothing about this case that
24 was handled in a normal fashion. That is not selective
25 prosecution.

E9nndoss

Sentence

1 So I'm now arguing that the zeal with which this case
2 was brought from inception to the Southern District is
3 uncharacteristic of any case that we have found. If you
4 recall, we didn't make a motion to dismiss for collective
5 prosecution. Your Honor is right. We made a motion to ask for
6 additional discovery.

7 What we did in that motion is we showed your Honor
8 that the normal pattern in cases where there's only this much
9 money and no candidate involved and no element of corruption,
10 90 percent of those cases are handled as FEC matters and there
11 is a settlement and you pay a fine.

12 What else we showed is that those cases that are
13 referred for criminal prosecution take years to get through the
14 process. We were at the Southern District in a matter of
15 months, in a matter of months.

16 So Mr. D'Souza has a political view of the world. I
17 don't have to agree to it to defend him. Your Honor doesn't
18 have to agree to it to understand him.

19 I begged him, I begged him not to go on any show until
20 after the sentencing, because I understood that there's no way
21 that you could go on. And he did listen to me about one thing.
22 He never discussed any of the facts of the case. There's no
23 reference to Tyler Vawser or any of the facts. He doesn't say
24 anything about the case.

25 And there is never a clip, including the one your

E9nndoss

Sentence

1 Honor played, where he doesn't say, I was wrong, I admitted I
2 was wrong, I pled guilty. He doesn't say he was forced to
3 plead guilty.

4 I ask the Court on the issue of acceptance of
5 responsibility, because here's the deal we made, and to be
6 honest with you, if ever I was in doubt that this case is being
7 treated special, it's this case, they have proven it to me, to
8 me not, to Mr. D'Souza. And I am not known in this building as
9 a crazy person, and I didn't drink the Kool Aid, and I am not a
10 political individual who espouses the end of the Obama
11 administration. I am just a practitioner in this building. In
12 this case things happened in this prosecution that are not
13 ordinary.

14 For example, we pleaded guilty the next court date
15 after your Honor decided our motions. Now, in this case, after
16 the *McCutcheon* decision, to be perfectly candid it would have
17 been considered malpractice for a lawyer like me not to at
18 least challenge the standing of whether or not *McCutcheon*
19 applied to this case, because I believe it should and many
20 people agree with me.

21 Maybe one day it will, and that will be the tragedy.
22 Two years from now it will apply, and we will have finished
23 these proceedings.

24 So we filed these motions. The government cavalierly
25 refers to them as frivolous. When your Honor ruled, your Honor

E9nndoss

Sentence

1 said, I got serious briefs from both sides, who did an
2 excellent job at presenting me with the issues. The Court
3 spent a great deal of time responding to our motions in a
4 cogent, well-reasoned decision, and denied them.

5 That happens. We then had in effect a preview of a
6 charging conference. Because the issue of intent, for example,
7 in the area of structuring has been litigated for years in this
8 building.

9 We had the same thought. Is there an issue of the
10 level of willfulness, of the level of intent. This wasn't Mr.
11 D'Souza who is not a lawyer. This was us trying to be good
12 lawyers.

13 Then, when your Honor told us what your definition was
14 going to be, we told Mr. D'Souza, You cannot win this case.
15 And Mr. D'Souza pled guilty. Even though it was before trial,
16 the government insisted that he loses his acceptance of
17 responsibility.

18 Judge, I have never had that happen any case in 37
19 years. What you lose is the extra point if it applies, because
20 you only get the authorized point under 3E if you don't cause
21 the government to prepare for trial. But I have never had a
22 defendant who actually pled on the eve of trial lose his two
23 points.

24 I am sure they have examples of it. It's never
25 happened to me. In addition, Judge, we have cases in other

E9nndoss

Sentence

1 districts where a defendant after trial still gets acceptance
2 of responsibility by the Court. So, to take it away from him
3 in this case, and that's why what we did, because I trusted in
4 your judgment, what we did was we had a carve-out. We can't
5 contest under the plea agreement that he's entitled to the two
6 points, but at the time of sentence, we made the very, very
7 careful record of the fact that we were permitted to ask the
8 Court to give him his acceptance of responsibility in the
9 context of your Honor's mind when you were considering whether
10 or not what sentence should or should not apply.

11 If I wanted to be cute, I've never violated terms of a
12 plea agreement before, but if I wanted to be cute I could make
13 the following argument. If you give him the acceptance of the
14 responsibility that I believe he deserves because he pled
15 guilty and has never said he's not guilty. In your Honor's own
16 mind he is in zone B if you want him to be there. We can't do
17 it because we can't advocate for it. But if you are in zone B,
18 you are entitled to probation.

19 THE COURT: In a way, that is an irony here in a
20 sense. And, of course, you have every right to make those
21 motions and to litigate this case, and you did a good job. The
22 irony is, and I don't know if that's the right word, but we are
23 in zone C. If this were in the guidelines regime, he would be
24 stuck with 10 to 16 months of incarceration.

25 If he had pled early, or soon after committing the

E9nndoss

Sentence

1 crime, he would be in zone B as you point out, for which
2 probation is an alternate sentence.

3 MR. BRAFMAN: Yes.

4 THE COURT: Almost every judge in this building would
5 give a first offender in zone B probation.

6 MR. BRAFMAN: Yes.

7 The probation officer correctly points out that, even
8 though we are in zone C, it is not 10 to 16 months as the
9 lowest sentence; you are entitled to apply a sentence of five
10 months of incarceration, five months' home confinement. But
11 we're asking for a variance.

12 THE COURT: I understand.

13 MR. BRAFMAN: Your Honor, I think your Honor obviously
14 gets this. We are asking for a variance, and we're asking for
15 a variance for a couple of important reasons.

16 I want to make a distinction, and it is not slick
17 lawyering. We rewrote our reply 15 times to make sure the
18 language was correct. There is a difference between a
19 defendant saying I am guilty, I accept responsibility, and yet
20 being able to maintain that I am guilty, I did it but I am
21 being aggressively punished because of who I am.

22 In this case I think he's right. It doesn't matter at
23 the end of the day what I think obviously what matters is what
24 you think, and what I think you think based on what the
25 defendant says is that by talking about these issues, he is

E9nndoss

Sentence

1 abdicating his acceptance of responsibility. And I don't think
2 that is a correct statement of the law.

3 If I plead guilty, and I come into court and say I am
4 guilty, and I do it under oath and then I go on a TV show and I
5 say I violated the law, what I did was wrong, however, I think
6 I'm being treated more harshly because of who I am, Judge,
7 there are millions of people who might agree with him. And to
8 the extent that the Court --

9 THE COURT: I suspect that's why he went on all of
10 those shows.

11 MR. BRAFMAN: No, your Honor. I'm getting to my next
12 point.

13 THE COURT: OK.

14 MR. BRAFMAN: There is another thing that I have to
15 deal with that prosecutors rarely understand unless they have
16 served in private practice.

17 I am representing an individual who is someone who
18 makes a living by being in the public venue. To the extent
19 that you see his movie and you don't like it, it's the number
20 one documentary in the world.

21 To the extent that you read his book you don't like
22 it, it is on the bestseller list, so it's not considered trash
23 or frivolous writing by a great part of the world. You may
24 disagree with him and I may disagree with a lot of the things
25 that Mr. D'Souza says, but as your Honor pointed out he has a

E9nndoss

Sentence

1 right to say it, and he is right.

2 When a person is making a film -- everything happened
3 at the same time. That is the problem with this case. With a
4 film, you have certain contractual obligations. You have to
5 promote it. You have certain contractual obligations with
6 respect to your book. You have to promote it.

7 This is someone who can be on TV every single night if
8 he wanted to be on TV. So, when he was invited, I said, Don't
9 to it. Don't do it because you are bound to say something or
10 they're bound to say something that is going to be interpreted
11 or misinterpreted by someone else, and you are going to get
12 this thrown at you at the time of sentence.

13 And he said to me: Ben, I promise you. I won't talk
14 about the case. I will not say that I am not guilty, but I
15 have an obligation to do some of this publicity during this
16 period of time. I can't tell a professional author that he is
17 required to completely shut down.

18 Now, with the benefit of hindsight, maybe he will
19 regret those appearances, but at the end of the day this was
20 not him flaunting himself at you, sir. This was not a sign of
21 disrespect to you, and it was not a sign of disrespect to this
22 process.

23 So let me talk about the issues that are not in
24 dispute. Let me talk about why I think he shouldn't go to
25 prison.

E9nndoss

Sentence

1 THE COURT: You know what, I didn't take it as an
2 instance of disrespect or any of that. I thought it was
3 thoughtless.

4 I thought it was thoughtless of what he was trying to
5 convey in this sentencing submission and what he was trying to
6 do there. I thought it was not reflective. I thought actually
7 if it were me or if it were most people, most defendants that
8 who had pled guilty to serious -- it is a felony after all,
9 right? I know you wanted it to be a misdemeanor, but it was a
10 felony. It carries a jail sentence.

11 I thought it was totally thoughtless and not
12 self-reflective and not self-aware to think that, whatever
13 anybody thinks about the TV interview -- I saw three. One I
14 mentioned to you I inadvertently ran across, two that the
15 government submitted. I think there were more from what I
16 understand, but I have not seen any more. I thought that was a
17 thoughtless, not self-aware undertaking.

18 MR. BRAFMAN: I will accept that from the Court
19 without argument, because I begged him not to do it, regardless
20 of whether it would turn out right or wrong, because I was
21 afraid.

22 But I submit, sir, with great respect, that whether
23 someone should or should not go to prison should not be based
24 on whether he did something thoughtless or careless in an
25 interview.

E9nndoss

Sentence

1 I think what you should focus on, and I want to just
2 talk about, first of all, you are not just required to sentence
3 under the law for the offense. I understand the offense is
4 serious. But the courts tell us that the court must also
5 sentence the man, the person.

6 The person you have before you is a first offender.
7 There's no dispute. He's 53 years old. Whether you agree or
8 disagree with this politics, he's made a stunning success of
9 his life, coming to this country at 17 years old with \$500,
10 getting into one of the best universities in the country,
11 ending up working in the White House, ending up lecturing
12 throughout the world, and never once violating the law, and
13 being a contributing factor to the education of a number of
14 people.

15 Something which your Honor I think should have noted I
16 hope in the Tyler Vawser letter is there is a spontaneous
17 generosity of this individual. Because there is a story Tyler
18 will recounted of a young African-American student coming into
19 the office of Kings College when the defendant was present at
20 Kings College.

21 He broke down in tears and he said, I'm \$10,000 in
22 debt. I cannot continue my education. And after trying to get
23 him a scholarship, which he couldn't get him, the defendant
24 wrote him a check for \$10,000, paid off his debts, and the kid
25 finished college. This happened in a minute. This happened in

E9nndoss

Sentence

1 a spontaneous moment of generosity.

2 Wendy Long in her letter explains to you that she
3 considers Dinesh D'Souza her brother. When her mother was
4 dying, he took care of her. When her father was dying, he took
5 care of her.

6 Wendy Long wasn't just a politician that Dinesh
7 D'Souza wanted to befriend. They went to college together.
8 And what's interesting in this letter is that he had no family
9 in the United States for a significant period of time. He was
10 here alone from India at the time when we didn't have the
11 Internet and e-mail and Skype. A call to India was like going
12 to the moon.

13 He was here alone. The people he met at Dartmouth
14 became his family. Several have written to the Court, and
15 Wendy Long was one of those people.

16 So here we are. And the real chutzpah in the wife's
17 letter of suggesting there a quid pro quo and for the
18 government to argue this in their own sentencing memorandum is
19 just a mindless voyage where they are trying to grasp, to
20 suggest to you that there's something sinister about what went
21 on, when it couldn't be further from the truth.

22 Wendy Long didn't fix him up with someone. Wendy Long
23 introduced him to a group of her friends who were successful
24 who he wanted to show the film to and discuss. One of them
25 independently, on his own, agreed to lend Mr. D'Souza money to

E9nndoss

Sentence

1 make the film. There was a loan agreement, there was interest,
2 the loan was repaid, the man made money on it, and it turned
3 into a hugely successful film.

4 This was not why he contributed money to Ms. Long's
5 campaign. He contributed money to Ms. Long's campaign because
6 he didn't have time to go to meetings. He was technically part
7 of the campaign committee. He never went to meetings. She
8 wanted him to hold fundraisers. He didn't want to. She wanted
9 the him to be -- he could have created a PAC for her if he went
10 to a lawyer and given her a million dollars and we would not be
11 having this conversation.

12 So, he did do something stupid which happened to
13 violate the law, and he knew it was wrong. But as your Honor
14 would charge a jury, you don't have to know that specific thing
15 that you are doing is a felony which violates a specific
16 statute. He knew it was wrong. He said he knew it was wrong.
17 He intended to do it, and he intended to know that it was
18 wrong.

19 In a million years, to be perfectly candid, he
20 testified at trial he would tell you that he didn't know
21 whether was a felony or a misdemeanor or something that you
22 could go to jail for. You know why? Because most of the
23 campaign finance cases involving no acts of corruption are not
24 settled with jail and felony prosecutions. You Google this,
25 you read this, that is all that comes out. That is what the

E9nndoss

Sentence

1 Federal Election Commission does all day. They settle cases
2 likes this.

3 So, this case, there's no ask of Wendy Long. All of
4 the cases cited by the government, there is an ask. I want you
5 to do something in your official capacity. That is a
6 corruption case. I want to get something from you. I want you
7 to do something in return for me giving you more money than
8 he's supposed.

9 There's no demand, and there's no offer by Wendy Long.
10 The reason he tells Wendy Long that she knows nothing about it,
11 he doesn't want to get her involved. He's done something
12 wrong. He doesn't want the candidate on even know.

13 A person who wants to corrupt a candidate wants them
14 to know. What's the point of giving them a lot of money if
15 they don't know you're doing it, if you have corrupt intent, if
16 you want something in return?

17 He doesn't want her to know. This is an act of
18 friendship by Dinesh D'Souza. And who did he pick? He picked
19 the two people who were closest to him at the time. This whole
20 case was sort of like, I'll date myself, it's sort of like
21 Peyton Place. You know Denise Joseph was living with Mr.
22 D'Souza; Denise Joseph's husband was living with someone else.

23 This woman who writes to you, who cries about her
24 husband being a philanderer, was dating a Las Vegas performer
25 two years before Mr. D'Souza had a mistress. All of that would

E9nndoss

Sentence

1 have come out at a messy trial. And to be honest with you,
2 Judge, there's part of me, there's part of me that wanted to go
3 to trial because sometimes in a trial the information is
4 softened to a Court as opposed to a plain plea agreement.

5 So there is no impact on the election whatsoever.
6 Wendy Long had as much chance of unseating Kirsten Gillibrand,
7 and everyone knew that, as I have of playing center for the New
8 York Knicks. It was just not going to happen. She was
9 flailing.

10 The e-mails which the government gave us in droves,
11 send money to the campaign, raise money for the campaign, so he
12 did it. So he did it and he did it, and now he's paying the
13 ultimate price.

14 You asked me about collateral penalties and what I
15 meant by that with respect to it. He is a well-sought-after
16 speaker. There are a number of universities who will not host
17 a convicted felon. There are a number of sponsors, corporate
18 sponsors who will not sponsor a convicted felon.

19 He's already received declinations from people. He is
20 going through a divorce. His felony conviction is going to be
21 used by his wife. It's already being used by his wife to try
22 to get every dollar that he has, even though she contributed
23 basically nothing to the marriage.

24 So, to the extent that people say, well, if you don't
25 go to prison, you don't get punished, that's not true. We have

E9nndoss

Sentence

1 cited the United States Supreme Court, which basically says
2 being on probation, being under restriction, being under house
3 arrest, doing community service, those are punishments that a
4 court has available to it.

5 So, you know, Judge, after listening to you, sir, I
6 had an outline that I wanted to address, and essentially it's
7 gone out the window, because what I am doing now is I am trying
8 to address the remarks that your Honor made, which indicates to
9 I think a good lawyer where your Honor's head is at.

10 THE COURT: It's funny, because my sense hearing you
11 is that you are not disagreeing with anything that I said. I
12 was not in saying what I said giving you a sentence. So
13 everything that you have said and everything that I have said,
14 including the specific letters and the specific people, maybe
15 not the same sentence or the same paragraphs, has totally
16 overlapped.

17 That's what I was trying to do, by the way. I'm
18 hopeful that which when the government stands up they say that
19 I said what they say, without taking sides one way or the
20 other.

21 That's what I was trying to do. As I say, listening
22 to you, I think I succeeded. You haven't said anything that I
23 have said that was incorrect, illegal, or factually. I was
24 giving a good-faith assessment so that it's all out there of
25 what the record shows.

E9nndoss

Sentence

1 The conclusion, I didn't say whether we will agree
2 about it or disagree about it. I think that's what you are
3 leading up to, but I am hopeful that I did a fair recitation of
4 what is contained in the documents and of my interpretation of
5 them.

6 MR. BRAFMAN: I will agree that your Honor said
7 nothing wrong, that you gave a fair recitation of what was in
8 the documents.

9 I disagree as to some of your Honor's implicit
10 interpretations because it's very important for me, if I
11 convince you of nothing else, to do the following: One, he is
12 entitled to acceptance of responsibility, because he pled
13 guilty in this courtroom before this Court under oath.

14 THE COURT: All I'm saying is I didn't say as a legal
15 matter, I am saying as a person -- as the judge in the case,
16 under 3553 I can pretty much impose any sentence. I could
17 impose probation, I could impose incarceration. I was careful
18 to say, I thought, that he signed a plea agreement in which he
19 didn't get acceptance of responsibility, as you pointed out,
20 from the government.

21 But what I was trying to convey was I thought, and I
22 still do think, that as a person there is a disconnect between
23 what I saw in the interview and a person who really accepts
24 responsibility. Not in a legal sense, because I know what I
25 can do. I know what my options are here. That is all I was

E9nndoss

Sentence

1 trying to say, and I still think that, to be perfectly honest
2 with you.

3 MR. BRAFMAN: I agree with you, that there is a
4 disconnect. I am not certain it is a disconnect between me and
5 you. I think it may be a disconnect between Mr. D'Souza and
6 the rest of the people who don't think like he does. But I
7 don't suggest that that's a basis to put him in jail.

8 THE COURT: I get that.

9 MR. BRAFMAN: If your Honor was inclined to put him in
10 jail.

11 THE COURT: I get that.

12 MR. BRAFMAN: He has a unique view of the world.
13 We've spent a lot of time together. On some of the issues he
14 discussed, I disagree vehemently. On some that he discusses, I
15 think he's right.

16 At the end of the day, that's not what this case
17 should be about. He violated the law. The law he violated is
18 a felony unfortunately. He was prosecuted for a felony that
19 involved a \$20,000 donation.

20 THE COURT: I get that.

21 MR. BRAFMAN: And he is a first offender.

22 THE COURT: I get all that. You probably do know I am
23 a former family court judge. So what I am looking for there,
24 and even here just by nature is to figure out why he really did
25 what he did. It is so -- not irresponsible. It is such a risk

E9nndoss

Sentence

1 that he took. I can't help but think that it is still
2 unexplained as to why a person at the pinnacle of his career,
3 at the pinnacle of society, why a person would commit a felony.

4 MR. BRAFMAN: Maybe I can help you.

5 THE COURT: Honestly, I still don't get it. It's so
6 self-destructive. I look for the same issues in family court.
7 Why do people do that. Why do people beat their children in
8 family court or whatever they do. I still can't figure it out
9 here. It is why I think I reacted to the interviews, because I
10 don't see real self-reflection or serious thought here as to
11 what motivated the behavior. That is all.

12 MR. BRAFMAN: Let me help you, your Honor.

13 THE COURT: Please.

14 MR. BRAFMAN: One of the ways that we do this at times
15 is, unless we have compelling proof to the contrary, we do it
16 through a process of elimination.

17 Was there a corrupt motive? No.

18 Did he want a contract from her to built a bridge or
19 get an appointment? The answer is no.

20 Was there a romantic relationship? Did he do this out
21 of love? No.

22 Was there anything ulterior here with respect to why
23 he did this? No.

24 So what you have that is undisputed, because Wendy
25 Long is the candidate and she writes it, there is friendship.

E9nndoss

Sentence

1 Sometimes friends do things out of friendship where they mean
2 well and they do something stupid and they destroy their lives
3 and they destroy the lives of others.

4 If your Honor can't grab an alternative reason, that's
5 why. It wasn't to thumb his nose at the Obama Administration,
6 because if he pleads guilty that's over. He could have gone to
7 trial if he wanted to create a soapbox, and he could have stood
8 up in this court and somehow managed to convince a jury that he
9 was being picked on.

10 He pled guilty. Once you plead guilty, you can't
11 argue effectively anywhere that I was innocent because I pled
12 guilty. So if you are looking for some reason, because I have
13 looked and what I have found and what Tyler Vawser tells you --
14 and Tyler Vawser is an interesting young man. He is not
15 prosecuted they gave him immunity. He is not prosecuted. He
16 committed a crime.

17 Now I know he did it at our request, so there is a
18 reason to give him immunity, and he was going to be a
19 government witness.

20 But he writes a letter to Court, and he confirms the
21 Wendy Long friendship a confirms the kindness of this man. The
22 interesting thing about this, Judge, this is something that
23 happened in 15 minutes. This isn't a crime where he plotted,
24 you scheme and you plan, it happens in -- you decide to do it,
25 you do it.

E9nndoss

Sentence

1 It's comparable to what happened with the young
2 student who comes into the Dinesh D'Souza -- and I'm trying to
3 imagine a president of Columbia or president of another school
4 seeing a young student with hardship and taking out his
5 personal checkbook and writing him a check for \$10,000. More
6 than any other letter in the book, that vignette tells you that
7 at heart he's basically a good person.

8 So he did that with Wendy Long. He took out a
9 checkbook, and he did it stupidly and he's right. He made a
10 mistake, Judge, a mistake, a criminal mistake.

11 We all do things where, boy, but for the grace of God
12 I could be in more serious trouble. So now the question that's
13 reposed with you -- and I've never wanted to be a federal
14 judge. Today I would like to change places for a couple of
15 minutes, and I say that respectfully. The real question.

16 THE COURT: I say respectfully that I would rather be
17 here than there.

18 MR. BRAFMAN: Not particularly helpful right now to
19 tell me that. But, Judge, the question is what do we do with
20 him.

21 THE COURT: I get it.

22 MR. BRAFMAN: Here's what we have proposed. Here is
23 what we have proposed. That something good come of this
24 adventure. You know he's never going to commit a crime again.
25 I think you know that.

E9nndoss

Sentence

1 He certainly is never going to give a candidate money
2 again, so you never have to worry about recidivism or violating
3 any campaign law. From the literature we have given you and
4 the references we've given you, at the age of 53 the odds of
5 recidivism in a white-collar case are almost zero in the case
6 of a first offender.

7 There's no greed motive. There is usually a greed
8 motive when you sentence a white-collar person. There's no
9 greed motive. This case cost him a lot of money, this case
10 cost him a lot of embarrassment, and this case cost him a lot.

11 And it is going to continue to cost him a lot because
12 probation is recommending a fine as part of its sentence as
13 well.

14 Here's what we have suggested. He came to this
15 country as an immigrant. He came to this country as an
16 immigrant, where but for his guts he would have been disposed
17 of or relegated to a menial job, as so many people 35, 40 years
18 ago who came here without the English language, without a
19 career, without any money.

20 Laura Ingraham describes how he went through Dartmouth
21 with one pair of shoes, and there were holes in the soles
22 because he worked as a waiter, and all the money he made he
23 used for his education.

24 So now he is a substantial person. We have proposed a
25 program of community service, where he would teach English as a

E9nndoss

Sentence

1 second language. They need that in this country. He's perfect
2 for that role.

3 Something good can come out of this. To put him in
4 prison for eight months or a year, God forbid, or any period of
5 time warehouses a very smart, productive citizen who could
6 contribute greatly to people in need. That's what we are
7 suggesting.

8 So now I am going to end on this, because this is the
9 issue that is going to hit me between the eyes I am afraid.
10 What are people going to think? Is there an issue of
11 deterrence that has to be reached?

12 I look at 3553 and none of those sections really
13 resonate well because, despite the fact that it is a serious
14 crime, most people who do what he does as a first offender are
15 not even prosecuted. Those who are prosecuted absent
16 corruption don't go to jail.

17 So the only factor, is there a general deterrence?
18 Because he is a famous guy. Will people take note of the fact
19 that when you violate the law you go to prison?

20 I was before Judge Glasser in the Eastern District 25
21 years ago and a prosecutor got up and said, you should put this
22 man in jail so someone else who is about to do this will know
23 that if you do it you go to jail.

24 Judge Glasser said, You want me to send someone who I
25 don't think belongs in prison so that someone else who has not

E9nndoss

Sentence

1 yet committed the crime may think of that man before he commits
2 the crime as a sentencing? That is not how I sentence.
3 Sentence is individualized.

4 Do we need to protect the side from Dinesh D'Souza?
5 No. No. You know that and I know that. No.

6 He's not going to harm anyone. Could he help people
7 if he doesn't go to prison? Yes.

8 If you send him to prison for a period of time, your
9 Honor, which is obviously your prerogative, I just think in
10 this case, in this case it is just a wrong sentence because he
11 doesn't deserve to go to federal prison for spending ten
12 minutes writing a check to his best friend as an act of
13 friendship.

14 That is really the bottom line. If he were not Dinesh
15 D'Souza and if he were not well known, I think we would be
16 having a different conversation. We may be not even having
17 this conversation.

18 People often ask me, because I represent high-profile
19 people, do high-profile people get treated better or worse by
20 the criminal justice system?

21 People think, because they have good lawyers and money
22 for investigators and accountants, they get a pass when others
23 don't. It is not the way it is.

24 People who are high profile when they come into a
25 courthouse sometimes get punishment that they really don't

E9nndoss

Sentence

1 deserve.

2 So I am asking you I have great respect for this
3 Court, and regardless of what you do I appreciate the
4 indulgence in letting me talk.

5 The passion you hear in my voice hopefully is not just
6 because I am a good lawyer. I have lived with this man now for
7 more than a year. He doesn't belong in a federal prison for a
8 crime that he committed. He can do something good, and I'm
9 asking you to give him the opportunity.

10 Thank you.

11 THE COURT: You're welcome.

12 I didn't know if you know this or not, Mr. Brafman,
13 but Judge Glasser is one of two judges, myself and him, that
14 are former family court judges.

15 MR. BRAFMAN: I know that. I do know that.

16 THE COURT: Mr. D'Souza.

17 THE DEFENDANT: Your Honor, I would like to try to
18 answer the question that you raised as something that has been
19 disturbing and puzzling you about what's going on here, why
20 would somebody like me do a thing like this.

21 I want to begin by thanking you for -- I feel it is
22 almost surreal for me to be here, and I am embarrassed.

23 THE COURT: Let me just say one thing. I don't want
24 to cut you off.

25 Talk in the first person, not of someone like you.

E9nndoss

Sentence

1 THE DEFENDANT: Of course.

2 THE COURT: That's frankly my problem.

3 Explain to me why you -- you -- are here and why you
4 did what you did. Not somebody like me, some famous person,
5 blah, blah, blah.

6 THE DEFENDANT: I will. I actually didn't mean it
7 quite that way.

8 THE COURT: I know. I am just trying to help in a
9 sense by saying what seems to be missing in this picture.

10 THE DEFENDANT: OK. I was 17 years old, which I set
11 foot in America. I came as an exchange student from India. I
12 grew up in a very settled community. Most of my relatives
13 lived within a one-mile radius of where I lived and a close
14 family.

15 I didn't realize when I came here that I was actually
16 never going home. In other words, I came here for a one-year
17 program, after which I expected I would return home.

18 But I stayed in America. America opened up doors of
19 opportunity for me. I found myself a student at Dartmouth.
20 The experience of leaving one's country is a little terrifying,
21 because you leave everything that matters to you behind, your
22 family, your friends, everybody you know.

23 And you are insecure in many different ways,
24 financially insecure, emotionally insecure. And some senses
25 you are insecure your identity. Because you leave your old

E9nndoss

Sentence

1 country, in some ways you are no longer Indian, and yet you
2 began to wonder if you'll ever be American. You are walking a
3 tightrope between two buildings, and you feel in no man's land,
4 somewhere caught in between.

5 When I was at Dartmouth I found a group of friends who
6 sort of welcomed me in. I became part of that group. In some
7 sense you can say they became my American surrogate family.

8 I say that because at that time, in four years of
9 college, I never went home. I had no money. So I basically
10 earned my way here in America, and these became my close-knit
11 friends, who literally -- one or two of them are in this room
12 right now -- literally took me for the first time to a store to
13 buy a navy blue blazer, explained to me that's part of the
14 etiquette being a Dartmouth student.

15 And so the very basic assimilation to American life
16 was accomplished by a group of close friends that I met
17 basically between the time I was 18 and 20.

18 Wendy Long was one member of that group of four or
19 five people. So, even though over the years we have lived in
20 different places, different states, there is a certain kind of
21 amalgam of hearts that occurs because of that. You feel very
22 close to that person, and you care about them in a very
23 fundamental way, not differently than you care about your
24 family.

25 When Wendy Long approached me about the idea of

E9nndoss

Sentence

1 running, and she approached a number of her Dartmouth friends,
2 most of us thought it was a very long shot idea, even a little
3 ridiculous. She had never run for public office. She had
4 never raised money.

5 I told Wendy, Don't do it. This is a battering
6 experience. You have delicate wings, and they are going to be
7 clipped. I advise you not to do it, but if you decide to do
8 it, I will try to help you.

9 Wendy decided to run. I was president of a college.
10 I had undertaken a movie project at the time, which became
11 2016. The movie became a runaway success at the very time when
12 Wendy was running hard for the Senate.

13 And Wendy would call me: Dinesh, I know these five
14 Indian doctors. Can you meet with them? I think they'll give
15 me money.

16 I don't know these guys from Adam. I'm reluctant to
17 meet them. I'm traveling in Tulsa, she wants me to show up at
18 a fundraiser in Westchester. I can't do it.

19 But I feel really bad for her. I feel like, Here's a
20 woman I know. I can see and feel her struggling. I don't
21 think she's going to win. Nobody does.

22 But I can see that personally she is humiliated. Her
23 campaign is kind of seen as a joke. I'm like, I want to help
24 her. I have given her \$10,000 on behalf of Dixie and me.

25 I will make a slight detour to address the Dixie

E9nndoss

Sentence

1 issue, just because you raised it. I didn't realize it was
2 even coming up today, but I'll bring it up since you raised it.

3 THE COURT: Your daughter raised Dixie in the letter
4 that she sent to the Court. So I am not pulling these issues
5 out of the blue. I have read everything in this file.

6 THE DEFENDANT: Sure. Maybe I will pass over it.

7 THE COURT: I am not saying to or not to. But it is
8 not like I am picking anything that isn't already before me.

9 THE DEFENDANT: Sure.

10 In the craziness of 2012 in which Wendy was asking me
11 to do a bunch of stuff to help her, I felt really bad that I
12 couldn't do more. I had given money. She wanted me to do a
13 butch of things for her, like appear for this event or host
14 that event. I allowed her to use my name on her literature.
15 That's kind of all I did.

16 So I thought, What else can I do for her? I got the
17 stupid idea or the bad idea, because I knew there was a \$10,000
18 limit. OK, listen, I got two guys who are close to me. What
19 did they give? And I reimbursed them. It was a crazy idea, it
20 was a wrong idea, it was a foolish idea. I wish I never had
21 had it. I can't believe I did something so bad and stupid.

22 I wish I didn't do it. I've regretted it and regret
23 breaking the law. I knew there was a limit. I obviously
24 didn't know it was a felony. I shouldn't have done it.

25 I have never wavered from that. I never thought I

E9nndoss

Sentence

1 would be in this situation. Not because I would be, quote,
2 caught. I should have started a PAC. I should have called a
3 lawyer. There are ten ways for me to have done this.

4 I didn't do those things. In that sense it was
5 something that was very, it was a mistake in that sense. There
6 is a better way to have done it. I could have helped her. I
7 chose to help her in the worst possible way.

8 So, I'm sorry for what I did. I have never said
9 otherwise. I have never even said I am being selectively
10 prosecuted. I feared that I was being.

11 The reason I feared that I was being is that I'm one
12 of the rare people in the United States who has been attacked
13 in person and by name by the sitting President of the United
14 States. That doesn't happen to a lot of people.

15 After I made my film 2016, there was an attack on the
16 film and on me on BarackObama.com, unsigned. That is the
17 President's personal website in which he railed against me and
18 railed against the film. The substance of it doesn't need --
19 but I am not being paranoid in thinking that there are very
20 powerful people in Washington how see me as an effective critic
21 of their policies, to the point where they need to attack me
22 directly. And that goes back to the very time that we are
23 talking about.

24 The reason we are here is I recognize that what I did
25 was wrong. I am contrite about it. In arguing with the

E9nndoss

Sentence

1 government and the policies about the IRS, these are my
2 political views, and I have expressed them.

3 I am not shy. I have not been reluctant to express my
4 views in public. And I have done that for 25 years. It's not
5 like I started doing that when this case began. I have been
6 doing that for my whole career.

7 There is no inconsistency in saying I disagree with
8 the Obama Administration. I think a lot of the things that
9 they are doing are wrong. There is no inconsistency with me
10 saying that and saying at the same time I did something wrong,
11 which I regret. I wish I never did, and I will never do it
12 again.

13 So I am here before your Honor to say that, under the
14 circumstances, I simply ask you to give me what I think is a
15 fair sentence, and it is not an imprisonment. It's some other
16 sentence in which reflects what I did, reflects the fact that I
17 had no motive other than to help Wendy, whom I care about
18 deeply.

19 I had no intention to do anything corrupt, and I
20 didn't have a corrupt motive in this case. I stood to gain
21 nothing, and I've only suffered for what I did.

22 I have suffered financially, I have suffered through
23 public embarrassment, I've suffered in all kinds of ways due to
24 what I did, and I will have to endure that. So I ask you, in
25 the context of who I am and what I did, to impose a sentence

E9nndoss

Sentence

1 does not have imprisonment in it.

2 Thank you, your Honor.

3 MS. COHEN: Your Honor, let me put the context of the
4 defendant's conduct in this case, and it will shed a different
5 light than I think the defense is urging the Court to view it
6 as. Not only is this a serious offense because it goes to the
7 heart of our electoral process, and I will talk about that in a
8 minute, but the way in which the defendant committed this
9 offense, the acts he took show that he committed this offense
10 in a particularly serious way.

11 This was not, as he said, something that he did in,
12 quote, a minute or something that took 15 minutes or was
13 spontaneous.

14 The defendant withdrew a substantial sum of cash weeks
15 before he approached his executive assistant, Tyler Vawser, and
16 the woman with whom he was living at the time, Denise Joseph,
17 to make the straw donations. He withdrew a substantial amount
18 of cash from his bank account, \$25,000, your Honor. He then
19 approached both of them independently, had a conversation with
20 them where he asked them to make the donation, with the express
21 promise that he would pay them back in cash, not a check that
22 he wrote on the spot, in cash at a later date after they had
23 written the check, the donation check not only on behalf of
24 themselves, but on behalf of themselves and their spouse.

25 Both people did it as the defendant asked. Tyler

E9nndoss

Sentence

1 Vawser wrote a check on behalf of himself and his spouse, and
2 Denise Joseph had her husband write a check on behalf of
3 herself and on behalf of herself and Dr. Joseph.

4 The defendant then went back to Tyler Vawser and
5 Denise Joseph, made sure the checks had been written, and gave
6 them both an envelope, Tyler Vawser an envelope with \$10,000 of
7 cash, and Denise Joseph an envelope with \$10,000 in cash.

8 This was not a one-time check writing, spontaneous
9 thing. This was a premeditated decision to break the campaign
10 finance laws, laws that, as your Honor said, go to the very
11 heart of our electoral process. In doing so the defendant
12 exposed people to criminal liability.

13 Tyler Vawser, as the defense said, received immunity
14 for his conduct from the government. Denise Joseph and Dr.
15 Joseph both entered into nonprosecution agreements with the
16 government.

17 He exposed two people who relied on him both
18 financially -- Tyler Vawser described the defendant as his
19 mentor, and Denise Joseph, who was romantically involved with
20 him and financially dependent on him at the time. He exposed
21 both of them and their respective spouses, he gave them
22 criminal exposure.

23 So, your Honor, this motive, this was not just a
24 simple, misguided act of friendship. This was a premeditated
25 decision by the defendant to break the laws of the United

E9ndoss

Sentence

1 States.

2 I would also add with respect to timing, because it's
3 been brought up both by Dixie D'Souza and by the defense that
4 it was not just a misguided act of friendship. Wendy Long, and
5 the government at trial would have introduced e-mails to this
6 effect, introduced the defendant to the man who became the
7 primary financial backer of his film.

8 The timing, your Honor, of when Ms. Long introduced
9 the defendant to that financial backer is relevant here,
10 because she introduced the defendant to that backer about a
11 month before in July of 2012, about a month before the
12 defendant asked Tyler Vawser and Denise Joseph to donate to
13 Wendy Long's campaign. So perhaps it was not only friendship,
14 but a desire, as Dixie D'Souza said, to pay back someone who
15 had helped them secure much-needed funding for his film.

16 But, your Honor, I offer these facts that are not
17 disputed just to help your Honor understand the seriousness of
18 this offense and to rebut any claim that it was a mistake that
19 happened in the span of 15 minutes or one minute even.

20 Your Honor, also, the government in bringing the
21 defendant's post-plea statements to the Court's attention was
22 not trying to suggest the defendant should go to jail for
23 making such statements or for, as is his right, speaking to the
24 public. Rather, the government brought those statements to the
25 attention of the Court to show the Court that the defendant's

E9nndoss

Sentence

1 claim of remorse and in his words profound contrition were
2 false.

3 Your Honor showed one of the videos. We provided
4 transcripts of both that video and another one, and I know your
5 Honor has viewed another of the defendant's statements to the
6 media.

7 I think in those statements that the defendant made it
8 shows his true personal belief about his crime, which is not
9 that he is contrite or remorseful or that he has respect for
10 the law.

11 The government believes that those videos show that
12 the defendant's views on the law, on this court, on the
13 prosecution are quite different than the views he presents to
14 the Court in his sentencing letter and that the defense
15 presents to the Court in its submission.

16 Your Honor, just because the defense raised this, the
17 government is compelled to respond. The idea that this
18 prosecution was treated any differently from any other
19 prosecution that is brought by the United States Attorney's
20 Office for the Southern District of New York in this courthouse
21 is, in your Honor's words, total nonsense.

22 This prosecution proceeded as every other prosecution
23 proceeds in this court. It was brought on by an indictment
24 obtained by a grand jury, the indictment was unsealed. The
25 defendant actually was permitted to self-surrender.

E9nndoss

Sentence

1 The parties appeared before your Honor. The day after
2 the indictment was unsealed, the day of the defendant's
3 surrender, the parties discussed the case, set a briefing
4 schedule and set a trial schedule.

5 There was nothing out of the ordinary. It was not
6 fast tracked. The deadlines were deadlines. The deadlines for
7 motions and the trial date of May 20 was what the parties
8 agreed to before your Honor based on the parties' trial
9 schedule and your Honor's trial schedule. There was nothing
10 out of the ordinary. There was nothing particularly zealous
11 about this prosecution.

12 To address briefly the other cases that both the
13 government and defense have brought to your attention in
14 similar straw donor type fraud cases, as the government has
15 repeatedly stressed, every case is different, every case turns
16 on different facts, every defendant is a different individual.
17 So comparisons between defendants are always somewhat tricky.

18 Here the government presented numerous defendants who
19 have been imprisoned for similar crimes, similar amounts of
20 donations, similar amounts of straw donors.

21 Every defendant may have had a different motive.
22 Defendants may have been employed as an attorney or been
23 employed as a lobbyist. Some have, some are different. All
24 defendants are different, and I know your Honor will sentence
25 this defendant based on his individual characteristics.

E9nndoss

Sentence

1 But, your Honor, what rings true through all those
2 cases and this one, your Honor, is that when our election laws
3 are violated it needs to be taken extremely seriously. The
4 importance of a transparent and fair election system goes to
5 the heart of our democratic system, and I think the government
6 submitted several transcripts in sentencings by judges in other
7 districts, similar straw donor cases where those judges
8 emphasized the importance of our election law system and of
9 transparency and truth in our campaign donations.

10 Your Honor, the sentence recommended here by probation
11 within the guidelines range of 10 to 16 months we believe is a
12 sentence that is, in light of all the 3553(a) factors
13 sufficient but not greater than necessary.

14 To the extent the defendant argues that no good can
15 come from prison, the government argues that, based on all
16 those factors, a prison sentence is sufficient but not greater
17 than necessary. And to the extent your Honor would like to
18 order community service, such community service can be
19 performed as part of his supervised release. It is not a bar
20 to also a term of imprisonment.

21 Thank you, your Honor.

22 MR. BRAFMAN: Your Honor, I want to beg the Court's
23 indulgence just two more minutes, sir, please, because there are
24 a couple of things that Ms. Cohen said that just can't be left
25 as she said them.

E9nndoss

Sentence

1 The only person who has knowledge of this event who
2 has spoken to the court about whether this was premeditation or
3 not is Mr. D'Souza and Tyler Vawser, one of the people who the
4 government immunized in his letter which appears at Exhibit 21.

5 In pertinent part Mr. Vawser says the actions that led
6 up to his plea happened quickly and without premeditation. I
7 believe that the Dinesh was caught up in the demands of running
8 a college, launching and promoting a film, and a desire to help
9 a friend in her efforts to become a senator.

10 She's just wrong. In terms of referencing the
11 \$25,000, she knows full well that if he had a sinister motive
12 involved he would have structured the removal of that cash and
13 taken it in amounts under 10,000 so that the bank would not
14 have to file a CTR.

15 They came out all on the once, and the reason for
16 taking the money out had nothing to do with what later
17 happened. He had just moved to New York. He no credit line
18 here. So to the extent that he used this money, this isn't a
19 question of a premeditation that changes the landscape.

20 Your Honor, the one thing I want to just end on, I
21 have never been in a case, especially in the Southern District
22 of New York, where they can't give a Court one case, one case
23 where a defendant like this has gotten a prison sentence absent
24 evidence of corruption and scheming or special relationship or
25 special knowledge.

E9nndoss

Sentence

1 Throughout this case, that's what they have done.
2 They cite these cases, they send them to your Honor, where they
3 cherrypick certain facts which suggest, Wow, this sounds like
4 it's an impressive sentence parity precedent. And then, when
5 you read the cases, you realize how distinguishable they are.

6 In all of our cases, the ones we cited, it is exactly
7 the same. They were election law violations. There were
8 various district court judges involved, who all believe in the
9 integrity of the system, and in none of those cases was a
10 prison sentence imposed in the case of first offender with no
11 prior criminal record.

12 So I offer that to the Court because I think the
13 strongest argument we have, to be perfectly candid, is a
14 sentence parity argument, because that is an argument that you
15 can debate, but you have to put up a shut up. Excuse the
16 expression. I don't mean that to the Court. I mean the
17 government hasn't put up on that issue, not one case.

18 Thank you.

19 THE COURT: OK.

20 I am going to adopt the findings of fact in the
21 presentence report unless defense counsel has any further
22 objections?

23 MR. BRAFMAN: No, none, your Honor.

24 THE COURT: How about Mr. D'Souza?

25 THE DEFENDANT: No, none, your Honor.

E9nndoss

Sentence

1 THE COURT: How about the government?

2 MS. COHEN: None, your Honor.

3 THE COURT: All right.

4 So, if you give me one minute, I am going to come out
5 and preview the sentence and then impose it.

6 I will say two things.

7 One, Mr. Brafman and Ms. Cohen I think actually have
8 done a good job, because I have read every inch of and I think
9 I have presaged each of your arguments. And I read your chart
10 and even the parts that were in bold to make a specific
11 distinction between your case and this case. I think I've
12 fairly addressed the same issues that you had addressed. I
13 also think incidentally that throughout today's process, here's
14 what I think, and I don't mean to be insulting or critical, I
15 think I have figured out a little bit more about Mr. D'Souza.

16 This may come across as a criticism. I don't really
17 mean it as a criticism. He is a talker. In fact, he's almost
18 a compulsive talker. I don't think he's a listener. I don't
19 think he's really hearing himself, his surroundings, his
20 advisers.

21 That's just a comment. That's the way I understand
22 what's happened here. But, in any event, give me one minute
23 and I will propose the sentence.

24 (Recess)

25 THE COURT: I don't think that it's necessary for Mr.

E9nndoss

Sentence

1 D'Souza to go to jail. I think that a probationary sentence is
2 appropriate based on everything that I have said before, the
3 cases to be sure, what counsel have argued.

4 I do think it's important to put some teeth into the
5 probation period, it's going to be for five years -- this is
6 the preview of the sentence -- in order to achieve the
7 objectives of 18 United States Code Section 3553(a) and in
8 order for that sentence to be fair and reasonable, and also for
9 this sentence to reflect the seriousness of the crime, I've
10 discussed that before, to promote respect for the law, and to
11 provide a just punishment, and to also provide for services
12 that I think would be helpful. I think it will be helpful.

13 It's going to include one thing which is a little bit
14 different than most probationary sentences, and that is in the
15 five-year period. For the first eight months of that period,
16 he's going to be directed to be located at and live at what's
17 called a community confinement center. He's also going to be
18 required to do community service, as you have suggested, at
19 every week, one eight-hour day of community service during the
20 five years, not two hours here, two hours there, but one full
21 eight-hour day devoted to community service.

22 I also like the idea of his teaching English to people
23 who can't speak English who are either citizens or would-be
24 citizens. So that would be fine with me.

25 He's also going to be required to pay for the

E9nndoss

Sentence

1 community confinement center and for the supervision. There
2 are fees with probation. I'm sure you can discuss that with
3 Mr. D'Souza.

4 I am going to impose a \$30,000 fine as well. And I'm
5 also going to impose therapeutic counseling during the period
6 of probation.

7 The probation is also subject to what we call the
8 mandatory conditions, that defendant not commit another
9 federal, state or local crime; that he not illegally possess a
10 controlled substance; that he not possess a firearm, dangerous
11 weapon or destructive device, and that he refrain from any
12 unlawful use of a controlled substance.

13 He will be required to submit to one drug test upon
14 placement on probation and at least two unscheduled drug tests
15 thereafter as may be directed by the probation officer.

16 In addition, he has to comply with what are called
17 standard conditions 1 through 13, plus these: That he be
18 supervised in his district of residence -- Mr. Brafman, I take
19 that to be California?

20 MR. BRAFMAN: Yes. In San Diego, your Honor.

21 THE COURT: San Diego.

22 As I say, the first eight months of that probationary
23 period are to be spent as a resident of a community confinement
24 center, sometimes also called a residential reentry center. He
25 will need to report to probation -- actually I anticipated this

E9nndoss

Sentence

1 and arranged for that to happen today. I think you and he
2 should go to probation and discuss this community confinement
3 center. There is a facility in San Diego. There is also one
4 in the Bronx, but I assume that it would be San Diego, and the
5 probation department, who are here, have been very helpful in
6 identifying that resource. So that should happen today, so you
7 get all of this under way.

8 He will be, as I said before, required to participate
9 in weekly therapeutic counseling by a licensed therapist, and
10 in that regard may be required to contribute to the cost of
11 services rendered as by a copayment in an amount to be
12 determined by the probation officer based on such factors as
13 ability to may or availability of third-party payment.

14 As I said before, the community service is not to be
15 done piecemeal. It's one full day per week, eight hours,
16 teaching English language to non-English-speaking residents or
17 applicants for residency to the United States. That community
18 service is to be supervised by an agency that agrees to provide
19 written logs to probation and to the Court attesting to the
20 hours and the work performed. Probation again will make these
21 arrangements.

22 I am going to set another conference in the
23 not-too-distant future. I was thinking of October 8 at 10 a.m.
24 if you are all available. I just want to make sure that all of
25 the arrangements have been made. The \$30,000 fine is to be

E9nndoss

Sentence

1 paid within 60 days of today.

2 I am not intending to impose restitution because
3 there's no victim within the meaning of 18 U.S.C. Section 3663
4 or 3663(a).

5 I do intend to impose a \$100 special assessment, which
6 is mandatory under 18 United States Code Section 3013.

7 Briefly, the reasons for this sentence, the offense
8 level is 12, the criminal history category is I, the guideline
9 range is 10 to 16 months.

10 I feel though that this sentence best reflects the
11 criteria of 18 U.S.C. Section 3553(a), including the nature and
12 the circumstances of the crime, the history and characteristics
13 of Mr. D'Souza, who as Mr. Brafman and I pointed out earlier,
14 is a first offender.

15 I think this sentence reflects the seriousness of the
16 offense, promotes respect for the law, provides a just
17 punishment, affords adequate deterrence to criminal conduct,
18 both general and specific, adequately protects the public from
19 further crimes, and also offers the opportunity for appropriate
20 services in this case, therapeutic counseling in the most
21 effective manner.

22 So, Mr. Brafman, you certainly can be heard again if
23 you wish to before I impose that sentence.

24 MR. BRAFMAN: No, I just want to say thank you. I
25 also have to ask a logistical question. Provided that we can

E9nndoss

Sentence

1 provide the written assurance to the Court to the satisfaction
2 of the government that everything is in place in San Diego, do
3 you want Mr. D'Souza here personally on the 8th?

4 THE COURT: I would like everybody to be back here to
5 see me to make sure everything is in place.

6 MR. BRAFMAN: OK. I understand.

7 THE COURT: Mr. D'Souza, did you want to add anything
8 before I impose the sentence?

9 THE DEFENDANT: No. Thank you, your Honor.

10 THE COURT: How about the government?

11 MS. COHEN: No, your Honor.

12 THE COURT: I would ask Mr. D'Souza to stand, and I
13 will state the sentence.

14 The guideline range is 10 to 16 months.

15 Having considered all of the factors at 18 United
16 States Code, Section 3553(a) -- and I should mention again,
17 just as I did at the time of the motion practice, the
18 submissions of both the government and the defense were very,
19 very professional in this matter and very helpful -- it is my
20 judgment that Dinesh D'Souza be sentenced to a term of
21 probation for five years with the mandatory conditions that I
22 mentioned before and the special conditions 1 through 13, plus
23 the first eight months to be spent as a resident of a community
24 confinement center or residential reentry center.

25 He is to report today to probation to put that in the

E9nndoss

Sentence

1 works.

2 He will be supervised in his district of residence in
3 San Diego.

4 He is to participate in weekly therapeutic counseling
5 by a licensed therapist, and may be required to contribute to
6 the cost of services rendered.

7 He will also be required to reimburse the costs at the
8 residential community confinement center and also during the
9 period of probation supervision.

10 The community service again is one full eight-hour day
11 per week teaching English language. That would be supervised
12 by an agency which will supply written logs to probation and
13 the court attesting to the hours and work performed.

14 Conference October 8 at 10 a.m. just to make sure that
15 everything is working.

16 The fine of \$30,000, payable within 45 days of today.

17 No restitution.

18 A special assessment of \$100, which is due
19 immediately.

20 As for the reasons for this sentence, I believe it
21 complies with the criteria of 18 U.S.C. Section 3553(a).

22 Does either counsel know of any legal reason why the
23 sentenc should not be imposed as so stated.

24 MS. COHEN: No, your Honor.

25 MR. BRAFMAN: No, sir.

E9nndoss

Sentence

1 THE COURT: Then I hereby order the sentence to be
2 imposed as so stated.

3 Mr. D'Souza, to the extent that you have not already
4 waived your appeal rights, pursuant to the plea agreement dated
5 May 19, 2014, and here, of course, as I said before in my
6 remarks, the plea agreement does include a waiver of the right
7 to appeal.

8 It waives the right to file a direct appeal. It also
9 waives the right to bring a collateral challenge, including but
10 not limited to an application under 28 United States Code
11 Sections 2255 or 2241, the so-called habeas proceedings.

12 It also waives the right to seek a sentence
13 modification pursuant to 18 United States Code, Section
14 35(a)(2)(C) of any sentence that is within or below the
15 stipulated guidelines range of 10 to 16 months, which of course
16 this sentence is.

17 So, because it is below that, these waivers apply.

18 Are there any open counts or aspects of the case the
19 government was seeking to resolve at this time?

20 MS. COHEN: Yes, your Honor. The government dismisses
21 any open counts.

22 THE COURT: I will grant that application.

23 Starting with the government, did you wish to add
24 anything to today's proceeding?

25 MS. COHEN: Your Honor, only if I could request that

E9nndoss

Sentence

1 the Court, on October 8 at 10 a.m. I have another court
2 appearance. I just checked my schedule. If we could
3 reschedule that for either a different day or maybe later in
4 the afternoon.

5 THE COURT: We can do it at 9:30 on that day. How is
6 that? Are you busy then?

7 MS. COHEN: Your Honor, I will be preparing witnesses
8 for a hearing that begins at 11 a.m., in the morning.

9 MR. BRAFMAN: Your Honor, I can make it on the 8th,
10 but I can't make it on the 9th or the 10th. But I am available
11 on the 14th, 15th in the morning at any time convenient to the
12 Court. There are a number of holidays in the intervening
13 period.

14 THE COURT: Ms. Cohen?

15 MS. COHEN: Your Honor, I am just scrolling down on my
16 calendar. October 15?

17 MR. BRAFMAN: If it is in the morning, I can do that.

18 MS. COHEN: The morning is fine.

19 THE COURT: 10:30 on October 15.

20 MS. COHEN: Thank you, your Honor.

21 MR. BRAFMAN: Thank you, Judge.

22 THE COURT: Did you want to add anything else,
23 Mr. Brafman?

24 MR. BRAFMAN: No, I just want to thank you very much
25 for the care and thought that you have obviously put into this

E9nndoss

Sentence

1 proceeding, and I appreciate your patience this morning.

2 THE COURT: You bet. Thanks very much.

3 We are adjourned.

4 MS. COHEN: Thank you, your Honor.

5 (Adjourned)